



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KELLY BROWN et al.,

Plaintiffs,

ORDER

-against-

1-16-cv-07333 (RA) (KHP)

BARNES AND NOBLE, INC.,

Defendant.

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KATHARINE H. PARKER, UNITED STATES MAGISTRATE JUDGE

On September 27, 2018, Plaintiffs moved to compel Right Management to respond to Plaintiffs' subpoena seeking certain documents and e-mails relating to Right Management's study of Café Managers pursuant to Federal Rule of Civil Procedure 45. (Doc. No. 166.) Plaintiffs served the subpoena on Right Management on September 5, 2018, and provided proof of service indicating the same. (Doc. No. 167; Doc. No. 168, Exs. C and D.) The subpoena required production of documents by September 20, 2018. (*Id.*) Plaintiffs filed a memorandum of law and a declaration in support of their motion to compel. (Doc. Nos. 167-68.) Right Management's response to Plaintiffs' motion was due by October 11, 2018. Local Civ. R. 6.1(b). Right Management did not respond to Plaintiffs' subpoena nor to the motion to compel.

On October 22, 2018, this Court issued an Order requiring Right Management to respond to the motion to compel by October 30, 2018, or the Court would consider the motion unopposed, grant the motion, and consider Plaintiffs' request to hold Right Management in contempt for its failure to obey the subpoena or this Court's Order. (Doc. No. 175.) The Court required Plaintiffs to serve a copy of the Order on Right Management and file proof of service

with the Court (*id.*), which Plaintiffs filed on October 25, 2018. (Doc. No. 177.) Right Management has not responded to Plaintiffs' subpoena nor to the motion to compel. On October 31, 2018, Plaintiffs filed a letter indicating that Right Management's deadline to respond to the motion to compel has lapsed, and reiterating their request that the Court: (1) grant Plaintiffs' motion and order Right Management to produce all responsive documents, (2) award Plaintiffs their attorney's fees and costs associated with Right Management's failure to comply with the subpoena; and (3) hold Right Management in contempt for its failure to obey the subpoena and this Court's Order.

First, turning to Plaintiffs' motion to compel, this Court has reviewed Plaintiffs' subpoena and the information requested therein (Doc. No. 168-1), and finds the information relevant to the underlying action. The Court also finds that Plaintiffs' requests do not impose an undue burden on Right Management, as required under Federal Rule of Civil Procedure 45(d)(1). Accordingly, Plaintiffs' unopposed motion to compel is **GRANTED**. Right Management must produce documents responsive to the subpoena by **November 16, 2018**.

By **November 16, 2018**, Plaintiffs' counsel shall submit a letter, affidavit and documentation setting forth the attorneys' fees and costs incurred in connection with enforcement of the subpoena. Plaintiffs' counsel shall contemporaneously serve these papers on Right Management and file an affidavit of service indicating the same.

Based upon the memorandum of law and the Declaration of Michael J. Palitz, dated September 27, 2018, together with all of the exhibits annexed thereto, and upon all prior proceedings heretofore had herein, it appears that Right Management failed without adequate excuse to obey the subpoena served upon it on September 5, 2018. Accordingly, it is hereby

ORDERED that Right Management appear and show cause before this Court on Wednesday, December 19, 2018 at 3:00 p.m. in Courtroom 17-D, United States Courthouse, 500 Pearl Street, New York, New York, why an Order should not be entered pursuant to Federal Rule of Civil Procedure 45(g) and Local Rule 83.6, holding Right Management in civil contempt of Court for failure without adequate excuse to obey the subpoena and compelling Right Management to pay Plaintiffs' attorney's fees and costs in connection with enforcing the subpoena (as will be set forth in their submission on November 16, 2018) as well as a fine for each day of its failure to comply with the subpoena as provided for under Rule 45(b).

It is further **ORDERED** that Plaintiffs serve a copy of this Order and the papers upon which it is made, together with a copy of Local Civil Rule 83.6, by overnight express mail on Right Management and by personal service made upon it (and filing an affidavit of service with the Court), which will be deemed timely and sufficiently served if made on or before November 5, 2018.

It is further **ORDERED** that to the extent Right Management opposes imposition of costs and a fine, it shall file any brief and exhibits supporting its opposition by no later than December 7, 2018. Such brief and exhibits, if any, shall be served upon Plaintiffs' attorneys on or before December 7, 2018.

SO ORDERED.

Dated: October 31, 2018
New York, New York



KATHARINE H. PARKER
United States Magistrate Judge